

**BALTIMORE CITY PLANNING DEPARTMENT
COMPREHENSIVE REZONING PROJECT**

POSITION PAPER

ZONING FOR GROUP HOMES AND ASSISTED LIVING

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SUMMARY

Since the current Baltimore City Zoning Code was adopted in 1971, there has been a considerable increase in the older adult population, widespread de-institutionalization of persons with disabilities, and substantial growth in the numbers of people in need of assistance living without family to care for them. In 1971, there were very few group homes. Today they are a significant source of housing for persons with disabilities and for older adults needing residential care outside of their own homes.

In the thirty years since the Zoning Code was adopted, federal law has significantly expanded protections accorded to people with disabilities, including senior citizens. Litigation has established that the federal protections require small group homes for protected individuals to be considered as single-family dwellings for purposes for zoning. In contrast, the current Baltimore City Zoning Code requires that these homes obtain a conditional use ordinance.

The objectives of the proposed zoning revisions are to comply with federal and state laws concerning housing for persons with disabilities, appropriately respond to the above-described societal changes, coordinate with state licensing provisions for group homes, and, where appropriate, codify existing Baltimore City zoning practice.

Currently in Baltimore City, unrelated persons living together are generally restricted to groups of 4 or fewer, under the definition of family. Larger groups of persons with disabilities are allowed under the zoning use category “convalescent, nursing or rest home.” This is used for a wide range of types and sizes of facilities, from large nursing homes to small group homes. All uses under this category are conditional to the City Council, requiring an ordinance.

It is proposed to replace the convalescent, nursing or rest home use category and the currently unused “health and medical institutions: for care of aged and children” category with new categories that would more accurately describe the various types of care currently provided. Zoning use types (permitted vs. conditional) are proposed to vary with the size and complexity of the use, providing increasing amounts of oversight as the homes become larger. The following is recommended:

- Add a new use category for group home. Three types of group home are proposed:

- Small group home (assisted living for 1-8 persons). To comply with federal fair housing and disability law, small group homes would be permitted in all zones where single-family homes are permitted.
- Large group home (assisted living for 9-16 persons). This would be a permitted use in multi-family residential districts and in all O-R, and B zones, comporting with State law requiring large group homes for persons under treatment for a mental disorder to be permitted in all zones where multi-family dwellings are permitted. In single family residential districts, large group home would be a conditional use approved by the Board of Municipal and Zoning Appeals (BMZA), assuring oversight and public comment in areas where the impact is the most severe.
- Congregate living facility (assisted living for 17+ persons). This would be conditional to the BMZA in all R, O-R, and B zones, providing oversight and public comment to assure that these large facilities properly conform to the neighborhood in which they are located.
- Add a new use category for nursing home. This would be defined as it is in state law, and zoned in the same manner as hospitals: permitted in R-8, R-9, R-10, B-3 and B-5; conditional to the Mayor and City Council in R zones 7 and below, all O-R zones, B-2 and B-4.

A definition is also proposed for emergency shelter, as a replacement for the current “homes for non-bedridden alcoholics or homeless persons.” The City’s obligation under Federal law to provide reasonable accommodation to individuals with disabilities is codified, adding this as an additional duty of the Zoning Administrator.

ZONING FOR GROUP HOMES AND ASSISTED LIVING

ISSUE/PROBLEM TO BE RESOLVED

There have been substantial societal changes affecting the provision of housing for older adults, persons with disabilities, and other persons needing residential care since the Zoning Code was adopted in 1971. Changes include:

- Considerable increase in the older adult population;
- Widespread de-institutionalization of persons with disabilities;
- Significant increase in the numbers of people in need of assistance living without family to care for them; and
- Extensive use of group homes for residential care of older adults and persons with disabilities.

These changes are not well reflected in Baltimore City's present zoning regulations, nor do the regulations necessarily comply with:

- Current protections under the federal Americans with Disabilities Act (ADA) and/or the federal Fair Housing Amendments Act (FHAA);
- Current state legislation and industry practice regarding licensing of assisted living facilities and other types of residential care;
- Current Baltimore City zoning practice. As an example, when a dwelling unit is occupied by a family plus up to three unrelated individuals who are receiving assistance, the City Zoning Enforcement Office considers them together to be a family unit and thus permitted in any zone where a family may live. This is not now reflected in the Zoning Code.

The Baltimore City Zoning Code has no category for either group home or for assisted living, the term used by the State of Maryland for residential care. The use category "convalescent, nursing or rest home" is instead utilized, covering facilities that serve from four through several hundred residents. This does not permit regulations to be sufficiently tailored to the various types of facilities that today serve the increasingly complex population needing residential care.

Goals for amending the Zoning Code regarding group homes and assisted living are as follows:

1. Comply with federal ADA and FHAA protections;
2. Comply and coordinate with State of Maryland licensing requirements;
3. Codify current Baltimore City zoning practice that is not now reflected in the Zoning Code, where it is not in conflict with 1 or 2 above; and
4. Utilize terminology that is respectful toward those served.

Research for this topic included interviews with: the Baltimore City Law Department, Baltimore City Office of Homeless Services, Baltimore City Commission on Aging and Retirement Education, Baltimore City Health Department, and the Executive Director of the City's Board of Municipal and Zoning Appeals (BMZA); Baltimore Substance Abuse Systems, Inc.; the Open Society Institute; the Assistant Attorneys General for the State of Maryland assigned to the State General Assembly and the Maryland Departments of Planning, Health and Mental Hygiene, and Aging; staff of the Maryland Office of Health Care Quality; planning and zoning personnel in Baltimore County, Montgomery County, and several other Maryland jurisdictions, as well as the results of the session on group homes held at the Baltimore Zoning Reform Conference held in October 2001. Relevant American Planning Association publications were consulted; research was done into a number of pertinent legal cases; and a study was made of zoning code provisions regarding group homes and assisted living in several national models as well as in Baltimore County, Montgomery County, and a number of other Maryland jurisdictions.

EXISTING ZONING

Existing Definitions

Listed below are those use categories currently listed in the Baltimore City Zoning Code that pertain to residential care facilities, including group homes, assisted living or similar concepts. Those for which definitions are provided in the existing Code are preceded by *. All others are not defined in the Code.

- *Family
- *Convalescent, nursing and rest home
- *Service and housing center
- Institutions for the care of aged or children
- Homes for non-bedridden alcoholics or homeless persons
- Homes for non-bedridden alcoholics or homeless persons: nonprofit

Definitions provided in the Zoning Code are as follows:

Family:

(a) In general.

"Family" means one of the following, together with usual household helpers:

- (1) an individual;
- (2) 2 or more people related by blood, marriage or adoption, living together as a single housekeeping unit in a dwelling unit; or
- (3) a group of not more than 4 people, who need not be related by blood, marriage or adoption, living together as a single housekeeping unit in a dwelling unit.

(b) Roomers included.

"Family" includes, with respect to those listed in subsection (a) (1) and (2) only, up to 2 roomers within the dwelling unit, as long as:

- (1) they share a common entrance and cooking and bathroom facilities; and

(2) in the case of a multiple-family dwelling, no more than 2 roomers are in the entire dwelling, regardless of the number of dwelling units.

(c) *Exclusions.*

In no case, does more than 4 unrelated people, a rooming house, a hotel, or a fraternity or sorority house constitute a family.

Convalescent, nursing, or rest home:

(a) *In general.*

“Convalescent, nursing, or rest home” means a home in which 3 or more people who are aged, chronically ill, infirm, incurable, or suffering bodily disorders are housed and provided with food and care.

(b) *Exclusions.*

“convalescent, nursing, or rest home” does not include any hospital, clinic, or similar institution devoted primarily to the diagnosis and treatment of disease and injury, maternity cases, or mental illness.

Service and housing center:

(a) *In general.*

“Service and housing center” includes a facility for the transitional housing of 25 or more people.

(b) *Inclusions.*

“Service and housing center” includes a facility described in subsection (a) that provides, as a component of its overall program:

- (1) counseling, education, job training, or related services as an accessory use; or
- (2) longer term housing

Permitted vs. Conditional Use Types - Current Zoning and Practice

Although it is not now specifically stated in the Zoning Code, Baltimore City allows households including a family plus up to 3 persons receiving assistance to be considered for zoning purposes as a family unit. These households are thus permitted in all zones where a family may live, with no special zoning permission required and no involvement by the Zoning Administrator.

All other residential care facilities discussed in the above section are now conditional uses. Institutions for the care of aged and children are conditional to the BMZA. The remaining categories are conditional uses requiring an ordinance passed by the Mayor and City Council. This includes convalescent, nursing and rest homes (also used for senior assisted living), homes for non-bedridden alcoholics or homeless persons, and service and housing centers.

PROPOSED ZONING TEXT CHANGES AND RATIONALE

Summary

The zoning category “convalescent, nursing and rest home” includes too many disparate types and sizes of facilities, and, contrary to federal law, it forces even small group homes to obtain an ordinance in order to be approved. It is proposed that the convalescent, nursing and rest home category be eliminated and replaced by a two new definitions, group home and nursing home. A group home would be defined as a facility that provides a state-licensed assisted living program for persons who are disabled, and would consist of three types:

- Small group home (assisted living for 1 to 8 persons)
- Large group home (assisted living for 9-16 persons)
- Congregate living facility (assisted living for 17 or more persons)

Other proposed changes in use categories include:

- Home for non-bedridden alcoholics and homeless persons - Replace with the more respectful term, “emergency shelter,” to be used for the homeless and other persons needing temporary shelter.
- Institutions for the care of aged and children – Eliminate this category, which is no longer utilized, according to the Executive Director of the BMZA.

No change is proposed in the service and housing center category.

Federal Protections against Housing Discrimination

The federal Fair Housing Amendments Act (FHAA) and the federal Americans with Disabilities Act (ADA) bar housing discrimination on the basis of disability or handicap. According to the Assistant Attorney General of Maryland, Office of Counsel to the General Assembly¹ “the residents of assisted living facilities have uniformly been recognized to be ‘handicapped’” by the courts.

Litigation is ongoing regarding a number of aspects of how the ADA and the FHAA affect land use regulation. It is believed, however, that both laws require that zoning regulations provide accommodation to a group of unrelated persons with disabilities so that they may live in a manner comparable to that of persons without disabilities. The proposed new zoning categories and use types are intended to comply with this directive. To provide further protection, it is recommended that a section be added to the list of duties of the Zoning Administrator (2-105(b), specifying that the Administrator should “provide reasonable accommodation in the application of this Article for the siting,

¹ Letter from Kathryn M. Rowe, Assistant Attorney General, Office of Counsel to the General Assembly, to Senator Thomas Bromwell, September 20, 1999.

development and use of housing or services for an individual protected under the Federal Americans with Disabilities Act or the Federal Fair Housing Amendments Act.”

State Licensing and Supervision of Group Homes and Assisted Living

Assisted living programs in Baltimore City are licensed by the State of Maryland. They are supervised by the State Department of Health and Mental Hygiene (DHMH) and inspected by a number of agencies, including the DHMH itself, the Department of the Aging, the Department of Human Resources, and the City Health Department. The great majority of assisted living facilities in Baltimore City are for older adults. Others are for individuals with mental or developmental disabilities and other conditions requiring housing and supportive services (see *Rationale for the Proposed Size Categories of Assisted Living*, below).

Recognizing the Importance of Both Federal Protection and State Licensing

The definitions proposed below describe the protected classes as those that are both protected by federal law and licensed by the State of Maryland. This recognizes the legal reality that zoning protection for assisted living programs comes ultimately from the federal law; it also serves to protect group home residents and neighborhoods by reiterating that individual homes must be licensed by the State.

Rationale for the Proposed Size Categories for Assisted Living

Litigation has established that residents of small assisted living facilities must be treated for zoning purposes as if they were a family. The proposed “small group home” regulations comply with this by allowing facilities for up to 8 persons to be permitted in all zones where dwellings are permitted. It also comports with the State of Maryland licensing categories. The State licenses small group homes for 4-8 individuals with mental or developmental disabilities; for those with developmental disabilities, it also provides for “alternative living units,”² smaller facilities that provide residential services for up to 3 individuals.

The proposed new definition of “large group home” provides a use category for residential care facilities that are too large to qualify as small group homes, with 9-16 persons in the protected classes. This also comports with state licensing: facilities for persons with mental disabilities include a category for 9-16 residents.³ The Department

² Health-General Article, Title 7, Annotated Code of Maryland.

³ Private non-profit group homes for persons under treatment for a mental disorder are regulated in C.O.M.A.R. 10.21.04 (Department of Health and Mental Hygiene), which defines two categories of group home: small (for 4-8 residents) and large (for 9-16 residents). The regulations state that “A small private group home is deemed conclusively a single family residence and is permitted in all residential zones... A large private group home is deemed conclusively a multi-family residence and is permitted in zones of similar density. ‘Group home’ does not include a (a) foster home that is the domicile of the foster parent; or (b) facility that is (i) owned by or leased to the State or any public agency, (ii) regulated by the

of Aging licenses for assisted living facilities do not include size categories, but rather specify the exact number of residents allowed in each facility. For zoning purposes, however, it is considered reasonable to specify a cut-off in size for a facility that is to be considered as if it were a single-family home. A family of 8 would be relatively large by current standards; the addition of staff members increases the impact on the neighborhood. In addition, it will help simplify the Zoning Code if the size categories specified by the State for persons with mental and developmental disabilities are adopted for all protected classes.

The proposed new definition for “congregate living facility” provides a use category for facilities providing residential care or assisted living for groups of 17 or more persons in the protected classes. These are viewed as large and complex enough to be considered for zoning purposes as institutions, and to be regulated as such.

Proposed Definitions

Proposed Definition of Group Home

(a) “Assisted Living Program” defined.

In this section, “assisted living program” means a residential or facility-based program licensed or certified by the State of Maryland to provide housing and supportive services, supervision, personalized assistance, health-related services, or a combination of these services to persons who are 62 years old and older or other persons with disabilities who are protected under the Federal Americans with Disabilities Act or the Federal Fair Housing Amendments Act.⁴

(b) “Group Home” defined.

“Group home” means a facility that provides an assisted living program.

(c) Types of group homes.

(1) General.

Department of Juvenile Justice or Developmental Disabilities Administration, or (iii) organized wholly or partly to make a profit.” (10.21.04.02).

A group home for persons with developmental disabilities is defined in Maryland law as a residence that admits at least 4 but not more than 8 individuals. Public and nonprofit private group homes for persons with developmental disabilities are deemed by Maryland law to be single-family dwellings. They must be permitted to locate in all residential zones, and “may not be subject to any special exception, conditional use permit, or procedure that differs from that required for a single family dwelling. The provision of separately identified living quarters for staff may not affect the conclusive designation as a single family dwelling.” (Annotated Code of Maryland, Health General Article Title 7, Developmental Disability Law, Subtitle 6, Community-Based Residential Programs)

⁴ This definition is similar to the definition of assisted living program in C.O.M.A. R. Title 10, Subtitle 7, Chapter 14.02 (Department of Health and Mental Hygiene, Assisted Living Programs): “a residential or facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination of these services to meet the needs of residents who are unable to perform, or who need assistance in performing, the activities of daily living or instrumental activities of daily living...”

The following are the types of group homes. Neither resident staff members nor dependent children in the custody of a participant in the assisted living program is counted as part of the number of persons specified in (2) below.

(2) Designated types.

- (I) Group home: Small – 1 to 8 persons in an assisted living program.
- (II) Group home: Large – 9 to 16 persons in an assisted living program.
- (III) Group home: Congregate living facility – 17 or more persons in an assisted living program.

Proposed Definition of Nursing Home

(a) In General

“Nursing home” means a facility licensed by the State of Maryland to provide treatment and care for persons suffering from illness, disease, aging, or injury, who do not require the extensive or intensive care that is normally provided in a hospital, but who require the on-site availability of maximal nursing services provided by a licensed nurse, and medical, convalescent, rehabilitative, or chronic care.

(b) Exclusion.

“Nursing home” does not include a group home.

Proposed Definition of Emergency Shelter

“Emergency shelter” means a facility that provides temporary shelter for one or more individuals who are otherwise homeless.

Proposed Off-Street Parking Requirements

Proposed off-street parking requirements assume that parking needed for group homes differs from parking needed for ordinary housing in two respects: 1) persons who are disabled and residing in group homes would tend to generate fewer cars than residents of ordinary housing, and 2) that parking would need to be provided for staff members. The following is proposed for all zones in which group homes are allowed:

Small group home:	2 offstreet spaces
Large group home and congregate living facility:	1/4 staff members, plus 1/5 residents

Parking for nursing homes is proposed to be the same as parking for hospitals:

R-9, R-10, O-R-2, O-R-3, O-R-4, B-2-3, B-3-3, B-4-1, B-4-2, B-5-1, B-5-2	1/10 beds, plus 1/6 employees, including staff doctors
All other districts	1/5 beds, plus 1/3 employees, including staff doctors

PROPOSED ZONING DISTRICTS AND USE TYPES

Proposed Use Category	Proposed Use Type and Zoning Districts	Rationale for Proposed Use Type and Zoning Districts
Small Group Home (1-8 persons in an assisted living program)	P in: <ul style="list-style-type: none"> All R zones All O-R zones All B zones 	<ol style="list-style-type: none"> Allowed in all zones where dwellings are allowed. Laws protecting persons with disabilities require that small group homes be treated as single-family dwellings for purposes of zoning. This will greatly simplify the permitting process for the majority of group homes, including senior assisted living. These homes currently require a conditional use ordinance.
Large Group Home (9-16 persons in an assisted living program)	P in: <ul style="list-style-type: none"> R-6, R-7, R-8, R-9, R-10 All O-R zones All B zones CB in: <ul style="list-style-type: none"> R-1, R-1A, R-1B, R-2, R-3, R-4, R-5 	<ol style="list-style-type: none"> Allowed in all zones where dwellings are allowed. Permitting these homes as of right in multi-family, O-R and B zones adopts the State-mandated standard for this size facility for persons under treatment for a mental disorder⁵. CB in single-family zones provides for oversight and public comment in areas where impact is the most severe.
Congregate Living Facility (17+ persons in an assisted living program)	CB in: <ul style="list-style-type: none"> All R zones All O-R zones All B zones 	<ol style="list-style-type: none"> Allowed in all zones where dwellings are allowed. CB provides oversight and public comment to assure that these large facilities properly conform to their neighborhood setting.
Nursing Home	P in: <ul style="list-style-type: none"> R-8, R-9, R-10 B-3, B-5 CO in: <ul style="list-style-type: none"> R-1, R-1A, R-1B, R-2, R-3, R-4, R-5, R-6, R-7 All O-R zones B-2, B-4 	Nursing homes are proposed to be zoned in the same manner as hospitals.
Emergency Shelter	CO in: <ul style="list-style-type: none"> R-7, R-8, R-9, R-10 All O-R zones B-2, B-3, B-4, B-5 	Emergency shelter is a renaming of the current category “homes for non-bedridden alcoholics or homeless persons-non-profit”. No change in use type or zoning districts is proposed. “Homes for non-bedridden alcoholics and homeless persons” is eliminated as superfluous.

⁵ C.O.M.A.R. 10.21.04.02. See footnote 3 above, for further information.

P=Permitted

CB=Conditional to the Board of Municipal and Zoning Appeals

CO=Conditional to the Mayor and City Council